

DATE: November 20, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-04355  
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**DECISION OF ADMINISTRATIVE JUDGE  
CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

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\_\_\_\_ Applicant is a 50-year-old systems analyst who has worked for a federal contractor since 1995. He is a naturalized U.S. citizen from Hong Kong and several of his relatives are dual citizens of the U.S. and Hong Kong, including his wife. He also has other relatives that are citizens and residents of Hong Kong. Applicant failed to provide sufficient information to mitigate the security concerns raised under Guideline B, foreign influence. Clearance is denied.

**STATEMENT OF CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan.2, 1992), (Directive), as amended, DOHA issued a Statement of Reasons (SOR) on June 29, 2007, detailing the basis for its decision-security concerns raised under Guideline B, Foreign Influence of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.<sup>1</sup>

In a sworn statement dated July 19, 2007, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on August 7, 2007. In the FORM Department Counsel requested Administrative Notice be taken of official documents that were submitted as part of FORM. The FORM was mailed to Applicant on August 9, 2007, and received on August 16, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file an objection nor provide any additional material. Administrative Notice was taken of the official documents submitted by Department Counsel. The case was assigned to me on November 2, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_Applicant is 50 years old and has worked as a systems administrator for a federal contractor since 1995. He was born in Hong Kong and it is unknown when he immigrated to the U.S. He became a naturalized U.S. citizen in 1990. In 1990 he married his wife who was from Hong Kong. She became a naturalized U.S. citizen in 1994. Applicant obtained a Hong Kong passport in 1998 which was due to expire in 2008. He destroyed the passport in the presence of his security manager on April 30, 2007.<sup>2</sup> His wife is a dual citizen of Hong Kong and the U.S. and maintains a Hong Kong passport. She resides in the U.S. with Applicant and they have two children born in the U.S. Applicant proffered that his wife is willing to destroy her Hong Kong passport.

Applicant has a sister who is a dual citizen of the U.S. and Hong Kong, who resides in Hong Kong. He has another sister who is a citizen and resident of Hong Kong. His brother is a dual citizen of Hong Kong and the U.S. and he resides in the U.S. His father-in-law is also a citizen and resident of Hong Kong. Applicant proffered that none of his relatives work for or have positions with a foreign government, presumably Hong Kong.

Applicant maintains a bank account in Hong Kong with an approximate balance of \$5,000. He proffered that he intended on canceling the account in the next six months.<sup>3</sup> No additional information or documentation was provided to verify if he took such action. He estimated his current net worth to be approximately \$360,000. He has traveled three times to Hong Kong from August 1990 to June 2007. His last trip was in the preceding year.<sup>4</sup> The purpose of his trips are to visit

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended.

<sup>2</sup>Item 5.

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

relatives.<sup>5</sup> It is unclear how much contact Applicant has with his relatives in Hong Kong. No information was provided as to who he visited on his most recent trip, where he stayed, how long he stayed and the extent of his contact with his relatives. No information was provided as to how often his wife returns to Hong Kong and what her contact is with her relatives in Hong Kong. No information was provided as to either one's contact with their relatives in Hong Kong through other mediums, such as mail, telephone or internet emails.

\_\_\_\_\_ Hong Kong has been a Special Administrative Region of the Peoples' Republic of China (PRC) since July 1, 1997.<sup>6</sup> Ninety-five percent of its population are Chinese. It has a high degree of autonomy, except in the areas of defense and foreign policy, which are the responsibility of China.<sup>7</sup> Under Chinese nationality law persons who are of Chinese descent and who were born in the mainland of China or Hong Kong are citizens of PRC.<sup>8</sup> The Hong Kong government generally respected citizens' human rights. However, there are reports of problems that include residents ability to change their government and on the power of the legislature to affect government policies, issues about self-censorship, violence and discrimination against women and restrictions on workers' rights.<sup>9</sup>

The PRC's Military Intelligence Department is responsible for collecting military information against the U.S.<sup>10</sup> The PRC's Ministry of State Security is the 'preeminent civilian intelligence collection agency in China and maintains intelligence operations Hong Kong through a bureau utilizing PRC nationals with connections to Hong Kong.<sup>11</sup>

China is a large and economically powerful country, with over a billion people and an economy growing approximately 10% a year. It has an authoritarian government, dominated by the communist party. It also has a poor record on human rights, suppressing political dissent, and practices arbitrary arrest and detention, forced confession, torture and mistreatment of prisoners.<sup>12</sup>

China possesses a large and sophisticated military which include strategic nuclear weapons and missiles. The U.S. and China have been rivals since the cold war and particularly disagree on

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<sup>5</sup>Item 2.

<sup>6</sup>U.S. Department of State, *Consular Information Sheet: Hong Kong SAR*, dated August 1, 2006(CIS Hong Kong) at 1.

<sup>7</sup>U.S. State Department, *Background Note: Hong Kong*, dated March 2007(Background Note) .

<sup>8</sup>Consular Information Sheet on Hong Kong at 5.

<sup>9</sup>U.S. Department of State, *Country Report on Human Rights Practices-2006: China (includes Tibet, Hong Kong, and Macau)*, dated March 6, 2007 (Human Rights Report)

<sup>10</sup>Interagency OPSEC Support Staff, *Intelligence Threat Handbook* [Unclassified/FOUO], dated June 2004 at 74. (OPSEC Support Staff)

<sup>11</sup>*Id.* at 19-20, 71-72.

<sup>12</sup>Background Note at 1, 6-8; Human Rights Report.

the status of Taiwan. Despite improving economic relations, China continues to resist the U.S.'s superpower status.<sup>13</sup>

China targets the U.S. with active intelligence gathering programs, both legal and illegal. It is one of the most aggressive countries in targeting sensitive and protected U.S. technologies because of the U.S.'s role as a global superpower. China considers the large number of Americans of Chinese ancestry to be prime intelligence targets.<sup>14</sup> China is among the most active collectors of U.S. economic and proprietary information. This theft threatens U.S. national security in both military and economic terms and it reveals the intelligence-gathering capabilities of foreign governments and foreign companies.<sup>15</sup>

Persons traveling to China may be placed under surveillance by PRC security personnel. Such things as hotel rooms, telephones, and fax machines may be monitored, and personal possessions, including computers may be searched without the consent or knowledge of the traveler.<sup>16</sup>

## POLICIES

“[N]o one has a ‘right’ to a security clearance.”<sup>17</sup> As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”<sup>18</sup> The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>19</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>20</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>21</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive

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<sup>13</sup>*Id.* at 13-20.

<sup>14</sup>U.S. House of Representatives Select Committee Report, *U.S. National Security and Military/Commercial Concerns with the People's Republic of China*, dated January 3, 1999 (Select Committee Report); OPSEC Support Staff at 17.

<sup>15</sup>National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2000* at 5, 9-10,16.

<sup>16</sup>Consular Information Sheet at 3.

<sup>17</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>18</sup>*Id.* at 527.

<sup>19</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>20</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>21</sup>*Id.*

information.<sup>22</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>23</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.<sup>24</sup>

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.<sup>25</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>26</sup> The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>27</sup>

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>28</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>29</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denial.”<sup>30</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## **CONCLUSIONS**

I have carefully considered all facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

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<sup>22</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>23</sup>Executive Order 10865 § 7.

<sup>24</sup>*See* Exec. Or. 10865 § 7.

<sup>25</sup>*See Egan*, 484 U.S. at 531.

<sup>26</sup>*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>27</sup>*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

<sup>28</sup>*See* Directive ¶ E3.1.15.

<sup>29</sup>ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

<sup>30</sup>*Egan*, 484 U.S. at 531; *see* Guidelines ¶ 2(b).

## Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

I have considered all of the Foreign Influence Disqualifying Conditions (FI DC). FI DC 7(a) (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*), FI DC 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information*), FI DC 7(d) (*sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*), and FI DC 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation*). Applicant's wife, one sister, and brother are dual citizens of Hong Kong and the U.S. Both of his sisters reside in Hong Kong, with one being a citizen of Hong Kong. His brother resides in the U.S. His father-in-law is a citizen and resident of Hong Kong. No substantive information was provided to determine Applicant's contacts and relationships with those living in Hong Kong. I find Applicant has not provided enough information about his relatives, his contact with them, and other important information to mitigate the security issues raised. There is a presumption that the relationship with his wife is more than casual and infrequent. Hong Kong is part of China and the Chinese government views citizens and resident of Hong Kong as Chinese. The relationships that Applicant maintains create a heightened risk. Applicant's wife's father lives in Hong Kong which magnifies the heightened risk. Without more information, I find there is a potential for a conflict of interest. Therefore, FI DC 7(a), (b), and (d) apply. Although nothing was provided to confirm that Applicant divested himself from his bank account, I find the amount in it is not substantial in relation to his other assets and FI DC 7(d) does not apply.

I have considered all of the Foreign Influence Mitigating Conditions (FI MC) and especially considered FI MC 8(a) (*the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interest of the foreign individual, group, organization, or government and the interests of the U.S.*), FI MC 8(b) (*the nature of the relationships with the foreign person, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual group, organization, or government and the interests of the U.S.*), and FI MC 8(c) (*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*). Applicant has not provided enough information regarding his relationships with his relatives. As stated earlier it is

presumed he has more than a casual relationship with his wife. The country of China, of which Hong Kong is a part, has a bad human rights record, is known to target its people and is one of the most active collectors of industrial, military and proprietary secrets. Considering the lack of information and the evidence as a whole, I do not find any of the mitigating conditions applicable. Applicant simply has too many connections with citizens of Hong Kong. His wife's status makes her especially vulnerable, especially with her father still in Hong Kong. Applicant's siblings status also makes him vulnerable, without additional information to mitigate the concerns.

### **The Whole Person Analysis**

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In addition to considering the specific disqualifying and mitigating conditions under the Guidelines, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances surrounding the conduct to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation was voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered all evidence provided and considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns raised by the foreign influence concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1    Foreign Influence (Guideline B)                      AGAINST    APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant

### **DECISION**

\_\_\_\_\_ In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol. G. Ricciardello  
Administrative Judge